



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Diemaster Tool, Inc.

**File:** B-238877

**Date:** April 5, 1990

Richard O. Duvall, Esq., Dunnells, Duvall, Bennett & Porter, for the protester.

Judy Sukol, Esq., and Harlan F. Gottlieb, Esq., Department of the Army, for the agency.

Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest against submission of an alleged below-cost bid on the basis that it constitutes a "buy-in" is dismissed since a buy-in is not illegal and does not provide a basis upon which an award may be challenged.

### DECISION

Diemaster Tool, Inc., a Canadian firm, protests the award of a contract to Textron Lycoming under invitation for bids (IFB) No. DAAJ09-90-B-0050, issued by the Department of the Army for turbine shafts. Diemaster contends that Textron submitted an unreasonably low bid that will not cover its costs and which represents a "buy-in."

We dismiss the protest.

Bid opening was held on February 13, 1990. Textron was the apparent low (approved source) bidder at a unit price of \$2,404 (with first article), while the protester was the second low approved source bidder at a unit price of \$2,932. The agency determined that Textron was a responsible contractor and, on February 27, awarded the contract to that firm.

Diemaster asserts that in a previous procurement for this item, Textron offered a substantially higher unit price (\$6,080 in 1986). The protester contends that either Textron's current bid is below cost or the firm overpriced

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its bid in 1986. The protester also notes that Textron's prior pricing is under investigation.

In response, the agency has advised our Office that the investigation into Textron's pricing under the previous contract did not reveal any improprieties and that the protester is essentially challenging the contracting officer's affirmative determination of Textron's responsibility as a prospective contractor. We agree.

Diemaster's contention that Textron submitted a below-cost or "buy-in" bid provides no basis for protest. A bidder, for various reasons, in its business judgment may decide to submit a below-cost bid; such a bid is not invalid. Select Investigative Servs., Inc.--Request for Recon., B-235768.3, Aug. 1, 1989, 89-2 CPD ¶ 94. Whether the awardee can perform the contract at the price offered is a matter of responsibility.<sup>1/</sup> Here, the contracting officer has made an affirmative determination of Textron's responsibility. We will not review such a determination absent a showing that it may have been made fraudulently or in bad faith or that definitive responsibility criteria have not been met. 4 C.F.R. § 21.3(m)(5) (1989); Trak Eng'g, Inc., B-231791, Oct. 28, 1988, 88-2 CPD ¶ 402. No such allegation concerning the contracting officer's determination has been made by the protester.

The protester also alleges that Diemaster was denied a fair opportunity to compete for this contract under Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 225.7101(a) (1988 ed.), which provides that "it is DOD policy to . . . assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States." This provision states that Canadian products are generally exempted from the restrictions of the Balance of Payment Program and the Buy American Act. The protester does not allege, nor is there reason to believe, that these restrictions were improperly imposed here. In short, there is no indication that the protester's status as a Canadian

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<sup>1/</sup> Contrary to the protester's assertion, we remain of the view that an unreasonably low bid may not be rejected under Federal Acquisition Regulation § 14.404-2(f) (FAC 84-53) (providing for rejection of a bid where it is unreasonable as to price) solely because of its low price where the bidder is found to be responsible by the contracting officer. See generally North America Laboratories of Ohio, Inc., 58 Comp. Gen. 724 (1979), 79-2 CPD ¶ 106.

firm contributed in any way to its failure to receive the award.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in dark ink and is positioned above the printed name and title.

Ronald Berger  
Associate General Counsel